

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KIMOTHY R. McCRAY,	)	
	)	
Plaintiff(s),	)	No. C 06-6396 CRB (PR)
	)	
vs.	)	ORDER
	)	
EDWARD J. CADEN, et al.,	)	(Doc # 3)
	)	
Defendant(s).	)	
_____	)	

Plaintiff, a prisoner at Kern Valley State Prison and a frequent litigant in federal court, has filed a pro se civil rights complaint under 42 U.S.C. § 1983 alleging harassment and retaliation by correctional staff. Plaintiff seeks to proceed in forma pauperis under 28 U.S.C. § 1915.

The Prison Litigation Reform Act of 1995 ("PLRA") was enacted, and became effective, on April 26, 1996. It provides that a prisoner may not bring a civil action or appeal a civil judgment under 28 U.S.C. § 1915 "if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). "Section 1915(g)'s cap on prior dismissed

1 claims applies to claims dismissed both before and after the [PLRA's] effective  
2 date." Tierney v. Kupers, 128 F.3d 1310, 1312 (9th Cir. 1997).

3 Plaintiff has had three or more prior prisoner actions dismissed by a  
4 federal district court on the grounds that they are frivolous, malicious, or fail to  
5 state a claim upon which relief may be granted. See, e.g., McCray v. Rodriguez,  
6 No. C 06-4805 CRB (PR) (N.D. Cal. Aug. 18, 2006) (order of dismissal);  
7 McCray v. Rodriguez, No. C 06-5367 CRB (PR) (N.D. Cal. Sept. 7, 2006)  
8 (same); McCray v. Rodriguez, No. C 06-6565 CRB (PR) (N.D. Cal. Oct. 26,  
9 2006) (same). Plaintiff therefore may proceed in forma pauperis only if he is  
10 seeking relief from a danger of serious physical injury which is "imminent" at the  
11 time of filing. See Abdul-Akbar v. McKelvie, 239 F.3d 307, 312 (3d Cir. 2001)  
12 (en banc); Medberry v. Butler, 185 F.3d 1189, 1192-93 (11th Cir. 1999); Ashley  
13 v. Dilworth, 147 F.3d 715, 717 (8th Cir. 1998); Banos v. O'Guin, 144 F.3d 883,  
14 885 (5th Cir. 1998). He is not. Plaintiff's request to proceed in forma pauperis  
15 (doc # 3) accordingly is DENIED.

16 Under the law of the circuit, plaintiff must be afforded an opportunity to  
17 persuade the court that § 1915(g) does not bar pauper status for him. See  
18 Andrews v. King, 398 F.3d 1113, 1120 (9th Cir. 2005). Within 30 days of this  
19 order plaintiff may show cause why § 1915(g) does not bar pauper status for him.  
20 Failure to show cause, or pay the requisite \$ 350.00 filing fee, within the  
21 designated time will result in the dismissal of this action without prejudice to  
22 bringing it in a new paid complaint.

23 SO ORDERED.

24 DATED: November 13, 2006

  
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CHARLES R. BREYER  
United States District Judge